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Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES



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**HOUSE POST AUDIT
AND
OVERSIGHT BUREAU**

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BOSTON, MASSACHUSETTS 02133-1053

PRELIMINARY REPORT

REGISTRY OF MOTOR VEHICLES

REPAIR PLATES

March, 1994

GOVERNMENT DOCUMENTS
COLLECTION

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SUMMARY OF FINDINGS

- o The "so-called" reform legislation of 1991 as proposed and as implemented by the Registry has failed to address major problems with the repair plate system.
- o Even with new regulations, the current repair plate system is in large part unenforceable and places most of the onus on limited and apparently diminished enforcement resources. The enforcement program currently in place is not systematic and fails to identify and target chronic abusers. The Registry failed to develop an enforcement data bank from which a meaningful enforcement effort could be directed.
- o The Bureau found that the official Registry statements about the levels of enforcement were directly contradicted by state and municipal enforcement personnel.
- o The Registry has failed to develop bright line enforcement standards and has been a significant contributor to the lack of clarity in a system where abuse and legitimate use are almost indistinguishable.
- o Abuse of repair plates during the early period of study was widespread. The Bureau estimated that the rate of abuse was substantial - possibly as high as seventy five percent (75%).
- o Cities and towns of the Commonwealth continue to be deprived of motor vehicle excise taxes properly due as a direct result of the Registry's failure to provide local assessors with accurate and useful motor vehicle excise tax information for vehicles operated with repair plates.
- o The Registry of Motor Vehicles has been content to maintain the status quo with respect to repair plates.
- o The ability to use repair plate insurance policies on personal vehicles results in increased insurance costs for the vast majority of citizens who must register and insure private vehicles.
- o Repair plate holders avoid higher insurance rates and surcharges for traffic violations by using repair plates on personal vehicles.

- o The need for repair plates for the purpose of transporting and test driving uninsured and unregistered vehicles under repair does not justify the existence of the current repair plate system.
- o Due to increasing pressure for repair plate reform, the preferred form of abuse and tax evasion is shifting to other special plate types such as farm and dealer registrations.
- o Registry fees for repair registrations are not commensurate with the benefits received by the repair plate users.
- o The Registry of Motor Vehicles' method of enforcement did not provide for a systematic method of review.
- o The Registry has reduced its Section 5 enforcement resources.

BACKGROUND

The House of Representatives Bureau of Post Audit and Oversight (Bureau) has conducted a preliminary investigation of repair plate registrations as defined by M.G.L. Chapter 90 Section 5. Because of continuing reports on the nature and extent of repair plate abuse, the Bureau focused its examination on determining the level of abuse which actually exists and on identifying loopholes in the current statute which enable a select few to enjoy privileges not afforded the average motorist. Research performed by the Bureau revealed a continuing pattern of substantial abuse of repair plate registrations in the Commonwealth during the period of study. A review of the recent practices since the 1991 legislation indicated that the repair plate statute currently provides repair shop owners with valuable privileges not available to those unable to obtain repair plates.

The issue of repair plate abuse has plagued the Commonwealth for many years. Under the chairmanship of Robert A. Cerasoli, the current Inspector General, the Committee on Post Audit and Oversight first issued a report exposing problems with the Commonwealth's repair plate statute in December of 1988. In that report, the Committee documented high levels of repair plate abuse and identified statutory weaknesses in M.G.L. Ch. 90 Sec. 5

which invited abuse and impeded enforcement efforts. In addition, the Committee identified loopholes in the statute which provided a legal means for repair shop owners to enjoy monetary and other benefits not available to the general public. Some of the problems identified by the Committee in 1988 were addressed in part as a result of the concern generated by the Committee's report. Despite widespread attention however, problems with the Commonwealth's repair plate statute have persisted.

One recent attempt at legislative reform of the Commonwealth's repair plate system commenced in 1989 as part of Chapter 653 of the Acts of 1989. That legislation offered sweeping reform of the repair plate system and was intended to curb abuse and close the statutory loopholes. It was approved by the Legislature and scheduled to take effect January 1, 1991, one year after it was enacted. Chapter 340 of the Acts of 1990 signed December 20, 1990, delayed implementation of the reform legislation for another year. This additional delay was strenuously objected to by then Registrar of Motor Vehicles Robert Hutchinson. In addition to delaying implementation of the reforms, Chapter 340 of the Acts of 1990 required the Registrar of Motor Vehicles to conduct a study to explore possible alternatives to the reform legislation and file a report with the Joint Committee on Public Safety.



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Preparing the report that was submitted to the Joint Committee was the responsibility of the current Registrar, Jerold A. Gnazzo, a former president of the Massachusetts Auto Body Association. As a result of the Registrar's report, the original reforms were scrapped in favor of compromise legislation which called for the implementation of a decal program. The decal program, which was developed by Registrar Gnazzo, attempted to address only one of the many problems with the repair plate system. It provided only one mechanism for enforcement officials to confirm by visual inspection that a motor vehicle operating under a repair registration was in compliance with the Commonwealth's sales tax laws and title requirements. The modifications to the reform legislation which were enacted and which remain in effect today ignore many of the concerns that were addressed by the original reform legislation.

In October of 1992, the Inspector General of the Commonwealth, Robert A. Cerasoli, issued a detailed report on repair plates in which he concluded that:

"...the best way to reform the repair plate system is to abolish it."¹

The Inspector General's report highlighted serious problems with the repair plate system which continued to exist despite

¹Inspector General's Report, October, 1992 cover letter

efforts to improve the statute through legislative reform. The Inspector General offered recommendations for changes to the repair plate system which, ironically, were very similar to changes which were originally enacted in the reform legislation of 1989. The Bureau believes the Inspector General's recommendations represent a logical bright line review mechanism to enforce an area where abuse and loopholes have been the rule rather than the exception.

In addition to reviewing all reports on the issue of repair plates in the Commonwealth, the Bureau reviewed Registry files and conducted interviews with Registry officials, insurance groups, and local assessors. The Bureau also subpoenaed documents relating to repair plates from the Registry and the Department of Revenue. On Tuesday, September 21, 1993, the House Post Audit and Oversight Committee held a public hearing during which Registrar Gnazzo was questioned about repair plates.

The Bureau has found that abuses of the repair plate system in the Commonwealth as it currently exists continue to be widespread. The Bureau found that statutory loopholes in the most recent enactment continue to provide some repair shop owners with benefits not afforded the average citizen in the Commonwealth. The Bureau's specific findings are as follows:

FINDINGS

1. Abuse of repair plates during the early period of study was widespread. The Bureau estimated that the rate of abuse was substantial - possibly as high as seventy five percent (75%).

Abuse of repair plates must be distinguished from statutory loopholes which provide repair shop owners with advantages not available to the majority of citizens in the Commonwealth. Critics of the repair plate system have often cited examples of abuse, some of which are, in reality, legal uses of repair plates. For example, there have been highly publicized cases involving expensive vehicles being operated by the owners for personal use under a repair registration. Critics point to this as a flagrant abuse of the repair plate system when in fact they may not be. These cases are only abuses when there is no decal showing evidence of payment of sales tax and title fees. While the Bureau believes that personal use of repair plates is unfair, it cannot automatically be defined as an abuse under the current statute. The current law provides a legal loophole that allows a repair shop owner to operate a personal vehicle with repair plates. The Bureau believes that making the distinction between actual abuse and statutory loopholes is critical for any efforts to identify and correct the problems.

The Bureau has found that a charge of repair plate abuse which in reality is a statutory loophole has been defined by industry leaders and the Registrar as a "perceived abuse". The Bureau believes that the vast majority of so called "perceived abuses" are in fact loopholes in the system and which are

currently sanctioned by the Registry. The confusion about these loopholes leads the critics of the repair plate system to label the loopholes as actual abuse. In the Bureau's view, efforts to address a loophole or "perceived abuse" which allows for special benefits to a select group should equal efforts to crack down on actual abuse. There is simply no rationale to single out this industry for special privilege while denying them to other industries and citizens.

In the late 1980's, the Department of Revenue (DOR) stepped up enforcement efforts to collect sales tax on motor vehicles operated with repair and dealer plates. DOR's investigation revealed a high level of abuse of both dealer and repair plates. As recently as 1991, DOR research indicated up to a seventy five percent (75%) level of actual abuse of the repair plate system. The DOR had worked with the Registry in the development of the original reform legislation in 1989 and supported the provisions therein as a promising means of curbing abuse. When the legislation was delayed and a decal system favored by the industry and Registrar Gnazzo was substituted, DOR strongly objected. Expressing the reasons for DOR's opposition to the proposed decal system, one DOR official wrote:

- "(1) it would allow the registrar to make substantive determinations with regard to taxes;

- (2) it would substantially and unfairly reduce vehicle excise revenues to the cities and towns;
- (3) it extends rather than restricts the exemptions available to special plate holders and in, effect, does away with fraud and abuse in this area by redefining rather than constraining them."¹ (emphasis added)

In 1992, the Inspector General reported finding a high level of abuse once again. To attempt to identify the current level of abuse, the Bureau interviewed officers in the Registry responsible for enforcement of all Section 5 registrations including repair plates. The Bureau was led to believe that almost every spot check made at businesses which had been issued a repair registration uncovered some type of violation. When asked to quantify the actual percentage of spot checks which result in the discovery of a violation, the Bureau was led to believe that it could be estimated as high as seventy five percent (75%). Despite all efforts to date to curb actual abuse, some enforcement officers at the Registry informed the Bureau that a very high level of abuse continued to exist.

In addition to numerous reports on high levels of abuse from a number of sources including Registry officials, the Bureau discovered specific cases which illustrate current abuses of repair plates including:

¹DOR Legal Bureau memorandum of 7/29/91.

- o Repair plates issued to an appliance store
- o Repair plates issued to a fire protection company
- o Failure to title a vehicle with repair plates as recently as October of 1993
- o Lending of repair plates to non-repairers by owner of repair shop
- o Changes of address not reported to the Registry
- o Failure to maintain proper premises to qualify for repair plates
- o Use of repair plates without decals on late model Mercedes, Ferraris and Lincoln Towncars for personal use on weekends and holidays
- o Massachusetts repair plates on vehicles operated in the state of Florida
- o Multiple offenders who continue to possess valid repair plates

2. The Registry of Motor Vehicles of the has been content to maintain the status quo.

The current Registrar is a former president of the Massachusetts Auto Body Association. While serving as president of this group, he lobbied for the interests of the repair industry. At the time of his appointment by Governor Weld to the position of Registrar, Jerold A. Gnazzo owned and operated several auto body repair and painting businesses.

Shortly after becoming Registrar, Mr. Gnazzo was required to submit the Registry's report on repair plates. The report was

prepared and presented to the Joint Committee on Public Safety. This submission came on the heels of his appointment as Registrar. The Registry proposed the creation of a decal program instead of the sweeping reforms which had previously been enacted by the Legislature. The Bureau believes that proposing a decal program as the only means of addressing the many problems with the Commonwealth's repair plate system was completely ineffective and was disingenuous given the documented problems with the system especially in the area of motor vehicle excise.

The Bureau believes that despite recent reports documenting problems with repair plates, the Registry has been ineffective in bringing about comprehensive reform to repair plates and in some cases has taken actions which appear to undermine reform efforts.

The Bureau finds it disturbing that the Registry has opposed and diluted provisions of the reform legislation which could have made significant strides towards curbing abuse and tightening statutory loopholes. For example, prior to the issuance of the latest proposed and final regulations, the Registrar had opposed prohibiting the use of repair plates on personal vehicles which was part of the reform legislation. In his report to the Joint Committee on Public Safety, the Registrar explained his position on this issue writing:

"The ability to occasionally use
their business vehicles for

personal use is an industry wide practice and [the reform legislation] would result in the loss of a valued perk."³

The Bureau found no evidence to support the notion that personal use of repair plates could be characterized as "occasional". The repair law allows repair plate holders to permanently affix the plates to personal vehicles and operate them legally in the Commonwealth.

In response to the Inspector General's finding that repair plates had expanded into a taxpayer supported perk, the Registrar altered his position on personal use of repair plates writing:

"It is true that the repair plate system has expanded far beyond it's original purpose, but not as a special interest perk"⁴

When questioned about his statements at the public hearing before the Post Audit and Oversight Committee, the Registrar again altered his position explaining that:

"...the perk that was referred to in that time was in a report, to the Legislature of the existing law prior to the passage of the 1991 legislation, and it was simply a statement of fact that it was a perk that had been part of the industry for many, many years."⁵

- 10 -

³Registrar's report on Joint Committee on Public Safety dated 4/1/91.

⁴Gnazzo memo to Mary Lee King dated 11/18/92.

⁵Public Hearing transcript of 9/21/93, page 7.

Furthermore, the Registrar stated that the repair plate laws and regulations of the Commonwealth provided:

"...an opportunity for the
repairman to use the [repair]
plate on his personal vehicles..."

In fact, repair plates were routinely substituted for standard registrations which repair shop owners would otherwise have to obtain for their personal vehicles. The Registrar testified to the Committee that the opportunity to use repair plates on personal vehicles existed only prior to the enactment of the 1991 legislation. Yet the 1991 legislation did nothing to abolish personal use of repair plates. Now, after repeated and considerable negative comment about repair plate abuse and specifically the issue of personal use, the Registrar has issued new regulations which purport to prohibit personal use of repair plates.

The Bureau finds that many of the actions taken by the Registry have been inconsistent on matters relating to reform. After a Post Audit and Oversight review in 1988, the Registry and the Legislature began major reform efforts. The reform measures were virtually in place when the current Registrar took over at the Registry. A decal system which addressed only a part of

repair plate abuse was supported by the Registry as a viable alternative. The decal system was soundly criticized by the Inspector General yet the Registry defended the decal system while other abuses continued and loopholes remained.

Now that the Post Audit Bureau is again reviewing the repair plate system, the Registry has proposed new regulations which once again attempt to address the repair plate problems only in part. The Bureau finds it ironic that the Registry now supports proposals which it strongly opposed after the enactment of earlier reform legislation. Registry actions appear reactionary in nature and raise obvious questions about the level of commitment to meaningful long term reform.

In addition to opposing the prohibition of personal use of repair plates, the Registrar initially proposed that personal vehicles operated with repair plates should be exempt from motor vehicle excise taxes. The Registrar had proposed that instead of being subject to local excise taxes, a fifty dollar (\$50.00) per plate fee should be charged for each plate, and forwarded to local cities and towns. The Registrar supported this change despite the fact that it would cost local cities and towns money they were entitled to, and would provide the industry with a valuable tax break. A Department of Revenue official addressed this proposal noting:

"The Department (DOR) is strongly opposed to this change which can only encourage what the postponed [legislation] sought to avoid, i.e., "repair" or "dealer" registrations of luxury personal vehicles. Moreover, the exemption is unfair to other taxpayers both on an individual level... and on the larger fiscal level, i.e., in the loss of significant revenues to cities and towns."⁷

DOR officials also expressed their opposition to the legislatively mandated Registry bill H.R. 6212, filed in 1991, which was presented to the Joint Committee on Public Safety by the Registrar. A DOR official noted:

"The Department (DOR) nonetheless believes that H.R. 6212 goes too far in allowing repair plates to be used on vehicles owned or under control of repairman without regard to whether the vehicles are for business or personal use. This provision legalizes the use of repair plates in the very manner that initially prompted calls for reform."⁸

The Registrar and industry leaders have indicated that one of the most important reasons for the existence of repair plates in the Commonwealth is to evidence Garage Keepers Liability

⁷DOR Legal Bureau memorandum of 7/29/91.

⁸DOR memorandum to the Registry on 11/26/91.

Insurance coverage. Despite this assertion, the Registry has failed to consult with the Insurance Commissioner to explore possible changes to insurance requirements. A strong commitment to oversight of a fair and equitable repair plate system in the Commonwealth requires that any dispute over the insurance issues relating to repair plates be thoroughly examined. For example, the Bureau observed a number of towing companies operating wreckers and towing vehicles with regular commercial registrations as opposed to repair plates. Clearly there are companies that perform towing and repair activities that exist without repair plates on their vehicles. Apparently these companies do not need them to evidence Garage Keepers Liability Insurance. A detailed study of insurance requirements would assist Registry officials in addressing potential improvements to the repair plate system. Yet the Bureau found that the Registry has failed to undertake such a study as part of their consideration of possible reforms.

In his testimony before the Committee, the Registrar was unable to provide any substantive data with respect to the question of actual repair plate abuse. At the September 21, 1993 hearing, Committee members asked for basic numbers related to enforcement in an attempt to determine the current level of repair plate abuse. The Committee was not able to obtain meaningful answers to questions which would have shed light on

this issue. For example, when questioned by the Committee about the percentage of abuse of the system, the Registrar responded:

"I don't think there's any way to determine that number"⁹

The Bureau was unable to find evidence that the Registry had made any coordinated effort to quantify and define the parameters of abuse in the system.

3. Cities and towns of the Commonwealth have been deprived of motor vehicle excise taxes as a direct result of the Registry of Motor Vehicle's failure to provide local assessors with accurate and useful motor vehicle excise information for vehicles operated with repair registrations.

City and town assessors have repeatedly charged that repair registrations have resulted in lost motor vehicle excise tax revenues. Local assessors have been stymied in their efforts to collect motor vehicle excise taxes because meaningful information needed to assess the excise tax on vehicles operated with repair plates has not been forthcoming from the Registry. In interviews with local assessors, the Bureau heard claims that the Registry has observed a double standard with respect to the level of assistance they receive to collect motor vehicle excise taxes. While the Registry provides accurate information on vehicles not registered under Section 5, the Registry has failed to provide

⁹Public Hearing transcript of 9/21/93, page 44.

comparable information on vehicles registered under Section 5 including repair plates.

The Registry of Motor Vehicles routinely provides local assessors with necessary information and even generates motor vehicle excise tax bills for all registration types except Section 5 registrations. Excise tax bills are normally calculated by the Registry using information obtained through the title process. In order to obtain a title for a particular vehicle, information critical to identifying the vehicle such as make, model, year and vehicle identification number, must be provided to the Registry.

Registry personnel can then use the information obtained through the title process to determine the value of vehicles and calculate the motor vehicle excise tax based on the actual values. Bills or commitments are then forwarded to local assessors who enter them into the books and records of their particular city or town thereby assessing the tax.

Registry assistance in processing excise taxes collected by cities and towns has been a routine practice for years. The rationale for Registry assistance is straightforward. In many cases, it would be impossible for local assessors, many of whom are part time volunteers, to obtain the necessary information and calculate the tax without Registry assistance. Local assessors do not have access to computer information which the Registry can

easily use to generate motor vehicle excise tax bills. Many municipalities lack the resources to perform this function in a cost effective manner. Absent Registry assistance, cities and towns would have to increase staff levels and substantially increase their administrative cost of collecting motor vehicle excise taxes. Their efforts would be duplicative because they would be required to independently obtain information readily available at the Registry. Registry assistance would obviate the need for another level of costly administrative functions which would be required of cities and towns to collect the tax.

By failing to provide municipalities with core data on vehicles operating with repair plates, the Registry has facilitated the avoidance of motor vehicle excise taxes properly due on vehicles operated with repair registrations. Although Registry assistance to cities and towns is a routine endeavor, the Registry has failed or has been unable to provide accurate information on vehicles operated with repair plates.

The Registry has promoted the decal program as the tool which has enabled the Registry to provide the necessary assistance required by local assessors in processing excise tax on repair plated vehicles. The Registry requires that repair plate holders obtain a decal as evidence that sales tax and title fees have been paid on vehicles operated with repair plates. The Registry has also indicated that the information obtained through

the decal program would be used to generate motor vehicle excise tax bills for cities and towns. Purportedly, prior to the decal program, the Registry had no means of collecting the required information and could not generate motor vehicle excise tax bills for vehicles operated with repair plates.

Although vehicles operated with repair registrations have always been subject to sales tax and title fees, there was no enforcement mechanism in place to evidence compliance prior to 1991. Repair shop owners were essentially at liberty to ignore the sales tax, title, and motor vehicle excise tax requirements. The Bureau found no evidence that the current decal program provided any level of assistance with the collection of motor vehicle excise tax.

Registrar Gnazzo has argued that repairman and towing companies were exempt from motor vehicle excise tax prior to 1991. The Registrar testified before the Post Audit and Oversight Committee that:

"...until 1991, the repairman and the towing industry were not subject to the excise tax rules, which was one of the problems. It was not a situation of avoidance of a fair tax, it was a tax that was -- which they were specifically exempted from."¹⁰

¹⁰Public Hearing transcript of 9/21/93, page 22.

This statement is inaccurate. M.G.L. Chapter 60A Section 1 as it was written prior to 1991 exempted repairman from motor vehicle excise tax only under very specific conditions. Moreover, the prior statute did not provide any exemption at all to the towing industry. Prior to 1991, M.G.L. Chapter 60A Section 1 provided that:

"Motor vehicles or trailers owned or controlled by a repairman to whom has been issued a general distinguishing number or mark under section five of chapter ninety...shall be exempt from the excise imposed by this section, upon written application in writing filed with the assessors, if and so long as such motor vehicle or trailer is operated or propelled over the highways solely in connection with the business of the owner or controller...and in no way for his personal use or convenience or the personal use or convenience of his family or any other person;"

The statute further provided that :

"...if any such motor vehicle or trailer is operated or propelled otherwise than in the manner aforesaid, there shall be assessed and levied on such motor vehicle or trailer the excise imposed by this chapter..."

The statute also specifically authorized the assessment of motor vehicles used for towing stating:

"Notwithstanding any other provision of this section, motor vehicles or trailers owned or controlled by any person to whom has been issued a general distinguishing number or mark under section five of chapter ninety and which are operated for hire in towing other vehicles, shall be subject to the excise imposed by this section"

The Bureau finds the Registrar's interpretation of the prior statute to be inaccurate. Clearly both repairman and the towing industry were not categorically exempted from motor vehicle excise taxes prior to 1991 contrary to the Registrar's testimony.

In 1991, M.G.L. Chapter 60A Section 1 was amended to its current form. At the time changes were being considered by the Legislature, the Registry proposed legislation which would have created statutory exemptions from motor vehicle excise taxes for all private passenger vehicles operated with repair plates. Instead, the Registrar proposed that these vehicles be subject to an annual fifty dollar (\$50) fee. If enacted, this proposal would have extended motor vehicle excise tax breaks to motor vehicles operated with repair plates for personal use. The Registrar also proposed an exemption from motor vehicle excise taxes for vehicles used to tow other vehicles. After having reviewed the Registrar's actions with respect to this issue, the Bureau cannot reconcile those actions with the Registrar's sworn testimony before the Post Audit Committee.

The legislation which was eventually enacted in 1991 does not provide any exemptions from motor vehicle excise tax for the repairmen or the towing industry. Since 1991, all vehicles owned by a repairman and operated with repair plates have been subject to the motor vehicle excise tax. During this period, the Registrar has repeatedly pledged to assist cities and towns in the collection of the tax. When reminded of the importance of Registry assistance to cities and towns at the public hearing, the Registrar testified before the House Post Audit Committee that he agreed and stated:

"I totally agree with you, the Registry would assist in any way it could."¹¹

The Registrar further testified that:

"...we [the Registry] intend to do an intense manual system of auditing...working with cities and towns to pick up the excise tax on the towing community."¹²

As described earlier, the Registrar has indicated that the decal program would enable the Registry to assist cities and towns in a more uniform manner. The Bureau investigated the effectiveness of the Registry's efforts to date. Despite claims by the Registry and the long history of abuse in this area, the

¹¹Public Hearing transcript of 9/21/93, page 23.

¹²Public Hearing transcript of 9/21/93, page 23.

Registry has failed to provide accurate information to local cities and towns. Bureau staff interviewed officials from the Massachusetts Assessors Organization and local tax assessors to determine the efficiency of Registry assistance. The Bureau learned that since 1991, the Registry has provided assessors with limited and inaccurate information. In May of 1992, assessors received motor vehicle excise tax bills for vehicles operated with repair plates. These bills were described as totally inaccurate, and local assessors were unable to use them. In May of 1993, the Registry did not provide repair plate information along with other non-repair excise bills. Instead of information on particular vehicles, assessors were provided with limited information on businesses which had been issued repair plates. This information was of little use to assessors who simply lack the resources to visit businesses with repair plates, identify vehicles operated with repair plates, value the vehicles and assess the tax.

The Bureau finds these reports startling given the assurances of the Registrar that he would assist cities and towns the fullest extent possible. The Registry's failure to provide necessary information on vehicles operated with repair plates is unacceptable. The Registry's failure to provide cities and towns

with the same level of assistance in collecting motor vehicle excise taxes on vehicles operated with repair plates imposes substantial revenue losses on municipalities.

4. The new Registry regulations attempting to limit personal use were only recently developed.

The Registry of Motor Vehicles proposed new regulations aimed at closing a loopholes in the current statute in September of 1993. A press conference announcing the Registrar's proposed regulations was held on the morning of September 20, 1993. Pursuant to the Administrative Procedures Act, a public hearing for comment on the proposed regulations was held on October 27, 1993. Testimony from individuals representing the repair industry was heard. At that hearing, representatives testifying on behalf of the Massachusetts Auto Body Association openly questioned the need for any changes to the current repair plate system. Massachusetts Auto Body Association Legal Counsel, James Castleman testified at the hearing and stated:

"With all due respect, the Massachusetts Auto Body Association questions the necessity for changes to the regulation. While unsubstantiated allegations have been made regarding abuses of repair plates, we question whether such abuses actually exist."¹³

¹³Testimony submitted at Registry hearing on Section 5 Plates on 10/27/93.

The Bureau had ample evidence from field inspections and review of Registry files to clearly refute the claim of "unsubstantiated allegations". The Bureau does not believe that input from the repair industry addresses the problems that have been documented. The Bureau finds the Association's position unrealistic given the reported and documented levels of abuse and loopholes which currently exist. Clearly there are problems with the current system which even the Registrar has testified need to be addressed.

The Bureau also questions the timing of the issuance of the proposed regulations by the Registry. The press conference announcing the proposed regulations was held the day before the Registrar was scheduled to testify before the House Post Audit and Oversight Committee regarding issues relating to repair plates. The Registry indicated that the regulations were developed over the summer yet the Bureau found little evidence of any recorded documentation in subpoenaed materials that confirmed that claim. In fact only one document relating to the new regulations was provided to the Bureau. This memo, dated March 19, 1993, specifically highlighted the Registrar's request to:

"...allow a Repairman who is also a Motor Vehicle Dealer, to use his repair plate on any vehicle that he has purchased for resale."¹⁴

¹⁴Registry memorandum of 3/19/93.

As this memo indicates, as recently as March of 1993, it appears that the Registry was still trying to carve out and expand regulatory loopholes for repair plate holders.

The Bureau finds the timing of the announcement of the new regulations to be an interesting and curious coincidence. When viewed in the context of the overall agency response to this persistent problem, it appears to fit with a pattern of trying to defuse attempts at reform. The Bureau did subsequently learn of Registry meetings and discussions about the new regulations although apparently, no records of any meetings were generated and earlier drafts of the regulations apparently were not retained.

5. **The ability to use repair plate insurance on personal vehicles results in increased insurance costs for the vast majority of citizens who register and insure private vehicles.**

Registration of personal vehicles under M.G.L. Chapter 90 Section 5 by repair shop owners has added insurance costs for the vast majority of citizens who must register personal vehicles with standard registrations. According to the Massachusetts Automobile Insurers Bureau, Massachusetts drivers who do not have the privilege of using special plates issued to a business for personal use are in fact subsidizing the insurance costs of repair plate holders through higher premiums for standard liability insurance.

Premiums for liability insurance of Section 5 registrations are paid on a per plate basis. Therefore the number of liability premiums paid is less than the number of vehicles covered because the plates can be used on any vehicle owned or controlled by the business. The ability to obtain liability insurance for a higher number of vehicles based on a lower number of plates has been cited as a major reason that Section 5 registrations are necessary in the Commonwealth. Repair shop owners claim that the costs of insuring vehicles which are not in use is prohibitive. They claim the costs of separately registering and insuring each vehicle they own would force many of them out of business. This claim is made by the repair industry and supported by the Registrar despite the fact that other businesses in the Commonwealth which would greatly benefit from the ability to obtain insurance coverage in a similar manner cannot do so. Other industries which use vehicles infrequently could also claim the same needs, yet no exemptions exist except for repair registrations.

According to insurance industry officials, insurance companies, in cooperation with the Insurance Commissioner of the Commonwealth, calculate rates for standard registration liability insurance based on aggregate losses. Generally, total losses are tallied for a given year and divided by the total number of policies and a weighting system, (Massachusetts Safe Drivers

Insurance Plan) intended to make unsafe drivers pay more than those that drive safely, is applied. The use of repair plates on personal vehicles lowers the numbers of standard insurance policies included in the equation used to arrive at insurance rates thereby increasing the costs for standard policies. This practice results in a direct subsidy that all drivers in the Commonwealth who drive and insure personal vehicles under standard registrations provide to the users of repair plates on personal vehicles covered under business liability policies. Because of the fewer number of standard registrations as a result of using repair plates for personal use, there are correspondingly fewer standard insurance policies with which to divide the aggregate loss figure and calculate a rate.

6. Repair plate holders avoid higher insurance rates and surcharges for traffic violations by using repair plates on personal vehicles.

The Bureau has investigated claims that holders of repair plates are not required to pay insurance surcharges and higher insurance premiums for traffic violations as required by law under the Massachusetts Safe Drivers Insurance Plan for standard registrations. The Registrar has dismissed this claim and has testified before the Committee that except in the case of equipment or insurance violations which are issued to vehicle owners:

"...any violation that's assessed to someone...while they are operating under a Section 5 plate, goes into the Safe Driver Insurance Plan just as if you were driving a registered motor vehicle."¹⁵

This was found to be the case when investigated by the Bureau. However, in his sworn testimony, the Registrar failed to acknowledge a glaring loophole. According to officials at the Registry's Merit Rating Board which manages the Safe Driver Insurance Plan, additional insurance charges made to an individual driver assessed for traffic violations would only be paid if the individual personally registered and insured a vehicle in his or her name. The Massachusetts Safe Driver Insurance Plan applies only to standard registrations. Officials at the Merit Rating Board explained that because repair plates are issued to a business, they are classified as commercial and are not subject to the Massachusetts Safe Driver Insurance Plan. This has created a valuable loophole for individuals who operate personal vehicles with repair plates because they are not required to pay additional insurance charges for moving violations when they use repair registrations on their personal vehicles. The Bureau believes that the public statements by the

¹⁵Public Hearing transcript of 9/21/93, page 54.

Registrar on this issue are misleading. The Bureau finds no legitimate reason why this issue has not been addressed. The Bureau would note that as Chairman of the Merit Rating Board which is directly responsible for oversight of the Massachusetts Safe Driver Insurance Program, the Registrar could easily address this issue.

7. **There is no justification for requiring tow trucks to use repair plates while towing unregistered vehicles.**

Under current law, repair plates are required on towing vehicles which tow unregistered vehicles. This requirement was supported by the Registrar and incorporated into the Acts of 1991. The Bureau found no justification for this requirement. Insurance industry officials have indicated that any vehicle, registered or unregistered, towed by a commercially registered insured tow truck is covered under a tow truck operator's insurance policy.

The Bureau observed numerous cases of tow trucks and flatbed trucks being operated with commercial plates. Apparently these companies are able to operate successfully without the use repair plates. The legal requirement mandating tow vehicles to use repair plates creates a "need" within the industry when there is no functional necessity for them.

8. The claimed need for repair plates for the purpose of transporting and test driving uninsured and unregistered vehicles under repair does not justify the existence of the current repair plate system.

The decal system, supported by the Registrar requires that a decal be affixed to motor vehicles operated with repair plates. This decal indicates to enforcement officials that the vehicle is in compliance with the title requirements and sales tax laws of the Commonwealth. Any vehicle operated with a repair plate not displaying the decal is in violation of the law. However, the regulations requiring decals specifically exempt the following vehicles from the decal requirement:

- (b) Motor vehicles or trailers controlled, but not owned by a repairman and are being either:
 - 1. towed or
 - 2. operated solely for repair and testing, alteration or equipping or such transportation incidental thereto.

Therefore, a repair shop engaged in operating a customer's unregistered vehicle being test driven or transported to a facility for repair is not required to display a compliance decal. If such a vehicle were to be test driven or transported on the roads and highways of the Commonwealth without a decal, it would immediately raise questions with enforcement officials as to whether it was being operated in compliance with the existing laws. The only way for enforcement officials to determine if a vehicle being operated with repair plates and without a decal is

being operated legally, is to stop the vehicle and obtain some type of evidence from the operator that the vehicle is exempt from the decal requirement. The Bureau finds this situation utterly ridiculous. The notion that the use of repair plates for the original purpose for which they were created requires that enforcement officials stop every vehicle being operated in such a manner and investigate whether the vehicle is being legally operated is unacceptable. Enforcement of any repair plate system should be made simple and efficient, not burdensome.

The Bureau is puzzled by the lack of opposition to this situation. The Bureau believes that if repair plates were being used primarily for test driving or transporting customer vehicles and repair shop employees were constantly being pulled over and questioned by enforcement officials, there would be loud cries from the repair industry to change the system. The Bureau finds the industry's approval of the current system circumstantial evidence that situations which require a special plate for the purpose of test driving or transporting a vehicle under repair are infrequent, and do not justify the existence of the current repair plate system.

9. Due to increasing pressure for repair plate reform, the preferred form of abuse and tax evasion is shifting to other special plate types such as dealer and farm registrations.

During the course of its review, the Bureau observed a significant increase in the number of vehicles being operated in the Commonwealth under dealer and farm registrations where the vehicle was being operated for personal use. The Bureau believes that this increase is a direct result of increasing pressure to reform the repair plate system. In an attempt to preserve the benefits currently available to those with repair registrations, some repair shop owners are turning to dealer plates. In most cases, repair facilities are eligible for classification as dealers and would thus be eligible for dealer registrations. The Bureau is disturbed by the fact that Registry officials have even advised current repair plate holders to obtain dealer classification and subsequently obtain dealer plates. Deputy Registrar James McDavitt stated publicly that:

"One thing I'd like to clarify is that a repair plate holder can also get a dealer plate. At some point in the past this was not possible."¹⁶

The Bureau is alarmed by such unsolicited advice. Bureau investigators questioned some of the Registry's own enforcement officers about the impact of such a statement and were told that dealer plates would simply be the next "brush fire" within

¹⁶Registry Hearing on Section 5 Plates on 10/27/93, page 10.

Section 5 registrations. The Bureau observed numerous instances of dealer and farm plate abuse including:

- o Numerous sightings of vehicles operated for personal use at country clubs, beaches, sporting events, and shopping malls
- o Dealer plates on vehicles loaded with vacation equipment on the Garden State Parkway in New Jersey and the Maine Turnpike
- o Dealer plates on heavy trucks emptying commercial refuse dumpsters
- o Several recreational vehicles on the Massachusetts Turnpike extension with farm plates

10. Registry fees for repair registrations should be increased.

The Bureau found that fees charged for repair registrations are often lower than those charged for standard registrations. Although the initial cost for a repair plate is higher, it is a one time fee which costs less over time than standard registrations. The repair and towing industries apparently receive what are in effect discounts from the Registry which allow them to incur lower fees for registering vehicles than those incurred by the general public.

11. The Registry of Motor Vehicles' method of enforcement did not provide for a systematic method of review.

The Bureau examined hearing case files generated as a result of enforcement activity executed by the State Police unit assigned to the Registry. Each file had to be inspected manually by Bureau staff in order to obtain an understanding of repair plate abuse. The Registry failed to compile a data base or review methodology to allow repeat offenders and consistent abusers to be identified. The Bureau found little evidence to show that the Registry has made any attempt to comprehensively define the parameters of abuse in the repair plate system through the use of information contained in the hearing files. Case files for all types of Section 5 registrations were stored in a single file cabinet organized alphabetically. No attempt was made to categorize files by date, type of offense, type of Section 5 registration or action taken.

The Bureau found records which indicated that the Registry imposed different sanctions on businesses which had committed identical violations. The Bureau also found case files on repeat offenders yet there was no evidence to show that multiple offenses resulted in stiffer penalties. Registry officials have seemingly opted to ignore raw data from which meaningful statistics relevant to abuse could be obtained and used to improve the system.

12. The Registry of Motor Vehicles has reduced its Section 5 enforcement resources.

The Bureau's investigation has led it to believe that enforcement efforts at the Registry have been diminished in recent months. At the public hearing, the Registrar informed the Committee that there were twelve State Police troopers working full time on Section 5 compliance and that they were performing 300-400 spot checks of businesses per month in the repair plate area alone. Although the Bureau believes that the benefit of spot checks is limited by the absence of meaningful penalties for abuse, they did provide some measure of balance against a tide of widespread abuse. While the Registrar did not mention any future Registry plans to alter enforcement resources in his sworn testimony before the Committee, the mission of the State Police unit charged with performing spot checks and enforcing Section 5 registration laws has been altered since the Registrar testified. The Bureau heard numerous claims of reduced enforcement efforts despite statements to the contrary by Registry officials. The Bureau received significant information that the Registry decided to decrease enforcement efforts from the already inadequate levels.

The Bureau believes that Section 5 enforcement efforts should be increased. The Bureau found ample evidence to confirm that abuse of repair plates is widespread. A reduction in enforcement efforts will only perpetuate abuse of the system with or without the new regulatory proposals.

LEGISLATIVE CHANGES

Changes to repair plate regulations proposed by the Registrar will have some positive effect but will once again fail to comprehensively address problems with the system in a comprehensive manner. New regulations will only chip away at the problems which will continue to persist without substantial legislative reform. Legislative reform of the repair plate system should incorporate the following concepts:

1. Wrecker plates should be created and used on tow trucks and should be issued as general registrations which could be transferred only between tow vehicles.

The need to avoid the high costs of registering and insuring all tow vehicles has been offered by the industry and the Registrar as a major reason why repair plates are needed in the Commonwealth. The Bureau believes that this specific concern can be addressed through the creation of transferable wrecker plates. The transferability of wrecker plates would not force repair shops or towing companies to incur increased insurance and registration costs the industry and the Registrar claim would be prohibitively burdensome in the absence of repair plates. With transferable wrecker plates, the repair industry would continue to benefit from the ability to utilize all tow vehicles in the possession of the business without being required to register and insure every vehicle. The Registry should use the decal

system to ensure that all title fees and sales taxes properly due the Commonwealth are paid on all tow vehicles. The decal system currently in place for vehicles operated with repair plates should be exclusively applied to tow vehicles and should be switched to an annual renewal. The Registry should be required by statute to provide cities and towns with excise tax bills generated from information obtained through the registration and titling system. Improvements in the Registry's assistance to municipalities in the collection of motor vehicle excise taxes should focus on automation and ease of collection. Local assessors in many of the Commonwealth's cities and towns are part time workers with extremely limited resources. In many cases they simply are unable to assess motor vehicle excise taxes without assistance from the Registry. Efficient assistance has been provided by the Registry for standard registrations for years. Equally efficient assistance must be provided to cities and towns to facilitate excise tax collection on tow vehicles.

2. A maximum of two (2) test registration plates should be issued to repair facilities for the purpose of test driving unregistered customer vehicles under repair for defects affecting functional mobility.

Although the Bureau has found strong evidence that the need to test drive an unregistered customer vehicle is extremely infrequent, a legal means of doing so may be desirable. New "test plates" should replace current repair plates to satisfy

this need. The plates should be distinctive in color to facilitate enforcement. The plates should be issued only for the purpose of test driving or transporting an unregistered customer vehicle under repair for defects which affect the functional mobility of the vehicle. Use of repair plates for transporting unregistered customer vehicles for cosmetic repairs or elective modifications which do not impair the functional use of the vehicle should be strictly prohibited.

3. The Registry should be required by statute to provide the same level of assistance to cities and towns in processing motor vehicle excise taxes assessed on all vehicles whether operated with Section 5 plates or not.

The Bureau believes that the history of abuse and neglect with respect to Section 5 plates warrants a statutory mandate to insure that cities and towns are deprived of important excise tax revenues. Requiring the Registry to provide necessary assistance cities and towns would eliminate the dual standard which has been observed by the Registry with respect to providing information on vehicles operated under Section 5 registrations including repair plates.

CONCLUSION

The time has come for comprehensive legislative reform of the repair plate system in the Commonwealth. The problems identified by the Bureau have existed far too long. The Bureau's findings echo those of the Inspector General and earlier Post

Audit reports. Abuse of the repair plate system and loopholes in the statute continue to provide a select few with privileges and hidden subsidies not available to the general public. Now is the time for major reform in this area which has been historically dominated by nebulous standards and piecemeal enforcement.

